balance of convenience, does not go on that ground, but leaves the unfortunate impression that there is a jurisdictional objection against enjoining state officials in any case.

ALIEN ENEMIES IN THE COURTS OF A BELLIGERENT. — The European war, coming as it does after a prolonged period of free commercial intercourse between the great powers, has developed acutely the problem of what status shall be given in the courts to an alien enemy who is allowed to remain in a belligerent country after the outbreak of hostilities. A Canadian court has recently held that such an individual may recover in tort for a personal injury. *Topay* v. *Crow's Nest Pass Coal Co.*, 29 West. L. R. 555 (B. C.). An English court has refused to stop proceedings against a German insurance company. *Robinson & Co.* v. *Continental Ins. Co.*, 31 T. L. R. 20 (K. B. Div.).

War necessarily contorts the normal legal situation. Broadly speaking, all intercourse between citizens of the belligerent nations must cease. In the courts there will of course be no remedy whatsoever for the damage incurred by acts of hostility,[1] and for obligations that were entered into before the war and that mature either before or during it all remedies in favor of non-resident aliens must be suspended until peaceful relations have been restored.[2] But if an overstatement be made of the general principle,[3] attention may be diverted from certain important distinctions. It seems clear, for example, that belligerency ought not to alter the situation of an alien defendant, and operate in his favor by suspending the remedy against him. If he is within the jurisdiction and subject to personal service it would be odd reasoning that placed him on a better footing than a loyal citizen.[4] And this principle carried to its logical conclusion leads to the result that if the alien enemy is non-resident he is subject to all the usual remedies that are available against a non-resident defendant.[5] On principle it would seem that in this latter case the court ought to make sure of its being physically possible for the defendant to appear by attorney or in person, and to produce his evidence, and also that the proceeding ought to constitute an implied license for him to enter the jurisdiction if he chose to appear in person.[6] Otherwise the judgment would be purely confiscatory in effect, a policy which should be pursued, if at all, only by the executive. To refuse him the immediate payment of costs if he wins would also seem unjustifiable, and not answered by the suggestion that such a policy would furnish resources to the enemy, for by hypothesis an equivalent loss has already been inflicted.[7] All the customary defenses

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[1] Juando *v.* Taylor, 13 Fed. Cas., No. 7558.

[2] See 2 WESTLAKE, INTERNATIONAL LAW, 2 ed., 44–52. See also Driefontein, etc. Co. *v.* Janson, [1900] 2 Q. B. 339, 346; affirmed, [1902] A. C. 484.

[3] Such an overstatement was made by Lord Davey in Janson *v.* Driefontein, etc. Co., *supra*, [1902] A. C. 484, 499, and caused the court not a little difficulty in the recent English case.

[4] McVeigh *v.* United States, 11 Wall. (U. S.) 259, 267.

[5] Dorsey *v.* Kyle, 30 Md. 512.

[6] There is a suggestion favorable to this view in the recent English case at p. 21.

[7] See the recent English case where the query was raised at p. 22.

including set-off must be allowed the alien defendant,[8] but to permit counterclaim would violate the general principle that affirmative remedies must be suspended during hostilities.[9]

The Canadian case raises the problem of whether there are any circumstances under which a court will grant relief to an alien enemy plaintiff. It is clear that no relief can be demanded of right. Even in peace an alien has no right enforceable by action to enter the territory of another sovereign,[10] and in war it would seem to be fundamental that a sovereign may arbitrarily restrict or exclude an adherent of the enemy as he pleases. But as soon as the warring nation expressly or by acquiescence allows an alien enemy to remain within its borders without restrictions as to his rights at law, the situation must be viewed in a new light. Such permission connotes protection. One softening of the strict logical consequences of belligerency is already established in the rule that if aliens are caught in foreign territory by the outbreak of hostilities they will be allowed a reasonable time for the removal of their property.[11] And there is further analogy in the doctrine that where an alien enemy is licensed to trade, all his disabilities are removed.[12] It cannot be denied that there are cases which indicate that all alien enemies are under total disability to sue, but almost without exception they have to do with non-resident plaintiffs.[13] On the other hand, there is a distinct body of authority which holds that if the alien is allowed to remain he should be granted all the protective remedies that are essential to the scope of intercourse allowed him,[14] — a view which harmonizes with the modern desire for raising the standard of international ethics in warfare.

WILL A VOID ASSIGNMENT OF THE ORIGINAL LEASE CONSTITUTE A SURRENDER BY OPERATION OF LAW? — The answer to this question turns upon the theory underlying surrenders by operation of law. In a recently decided case in the Supreme Court of Illinois the court answered it in the negative. *Johnson* v. *Northern Trust Co.*, 106 N. E. 814. A tenant under a term for years with the lessor's con-

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[8] See McVeigh *v.* United States, *supra*, at p. 267; Seymour *v.* Bailey, 66 Ill. 288, 297.

[9] Although, as we submit *infra*, an alien enemy who is permitted to remain in the country may sue in the courts as plaintiff, the defendant here would be in the country solely for a special purpose and therefore not entitled to all the rights of those who have been allowed to remain for all purposes.

[10] Poll *v.* Lord Advocate, 35 Sc. L. Rep. 637.

[11] *Cf.* The John Gilpin, 13 Fed. Cas., No. 7,344.

[12] See United States *v.* Cement, 27 Fed. Cas., No. 15,945.

[13] Anthon *v.* Fisher, 2 Doug. 649, n.; Brandon *v.* Nesbitt, 6 T. R. 23; see Russ *v.* Mitchell, 11 Fla. 80.

[14] Maria *v.* Hall, 1 Taunt. 33, n.; Clarke *v.* Morey, 10 Johns. (N. Y.) 69. Chancellor Kent in delivering the opinion in this case brought out the important point that if the alien is within the jurisdiction when war breaks out he may stay with implied permission until expressly ordered away. In the principal Canadian case, where the plaintiff was expressly permitted to stay by an Order in Council, *a fortiori*, the result should be clear. See Russel *v.* Skipwith, 6 Binn. (Pa.) 241; 1 AMER. J. INT. LAW, 463; HALL, INT. LAW, 6 ed., 388.